

CRIMINAL REVISION APPLICATION NO.131 OF 1988.

Date of decision: 19.6.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. A.D. Shah, advocate for the petitioner.

Respondent No.1 served.

A.P.P. for respondent No.2.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

-----

June 19, 1997.

Oral judgment:

Called out. Mr. A.D. Shah for the petitioner is absent. Heard learned A.P.P. for respondent No.2.

The petitioner had preferred Misc. Criminal Application No. 230 of 1986 in the Court of learned Judicial Magistrate, First Class, Kalol under Section 125 of Criminal Procedure Code. The Court below on appreciation of evidence awarded Rs.250/- per month for maintenance.

Feeling aggrieved about adequacy of quantum of maintenance, the petitioner has preferred this application for enhancement with a request to award Rs.500/- per month for maintenance.

I have perused the papers. Since question centres around the quantum of amount only I would not like to go into the question of eligibility and other factual aspects.

As a cardinal rule, amount of maintenance depends upon the monthly income of the husband/ respondent No.2. In this case, the petitioner has alleged that monthly income of respondent No.2 is more than Rs.6500/- including Rs.1500/- as salary from M/s. Chokshi Tubes and Rs.5,000/- as his private business income. On the other hand, the respondent/ husband in his evidence has stated that his monthly income is Rs.500/- only. Except statement on oath no cogent and concrete evidence is produced on record by either of the sides about the total monthly income of respondent No.1. In examination in chief, the respondent No.1 has stated Rs.500/- as his income per month but significantly no suggestions have been made in cross-examination to establish otherwise. Thus, in absence of any other material the Court is left with no alternative than to accept Rs.500/- as monthly income and award Rs.250/- as maintenance per month which is completely in consonance with the provisions of law.

I have carefully gone through the judgment and am in complete agreement with the reasonings and the appreciation of evidence adopted by Court below for arriving at the conclusion. There is nothing on record to show that the reasonings are illegal, unjust or patently erroneous.

In the result, I find no reason to interfere with the order of the trial court in exercise of revisional jurisdiction under section 397 of the Criminal Procedure Code. Hence, the petition being devoid of merits is rejected. Rule is discharged.